IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8485 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the Labour Judges & Industrial Tribunal Members : yes

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SUNIL BHALCHANDRA JANI

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 8485 of 1993

MR DS VASAVADA for Petitioner No. 1

M/S MG DOSHIT & CO for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/04/2002

ORAL JUDGEMENT

#. Heard Mr.D.S.Vasavada, learned advocate appearing on behalf of the petitioner and Mr.M.G.Doshit, learned

advocate on behalf of the respondent - Board.

#. In the present petition, the petitioner workman has challenged the award passed by the Labour Court, Vadodara in Reference No.612 / 1984 dated 2nd March, 1993. Initially, this Court has issued RULE and expedited hearing of the matter by order dated 27th October, 1993. On behalf of the respondent, affidavit-in-reply has been filed, against which, rejoinder has also been filed by the petitioner and same are on record.

#. Learned advocate Mr.Vasavada appearing on behalf of the petitioner workman has submitted that the labour court has committed gross error in rejecting the Reference of the petitioner on the ground that he was not working on a permanent post of Tracer and he has not completed continuous service of 240 days in a year and therefore, Section 25-F is not required to be complied with. Mr.Vasavada, learned advocate has submitted that period in which the petitioner workman had worked with the respondent Board is not in dispute between the parties. He also submits that the actual working days of the petitioner, if taken into consideration from any angle, the petitioner workman has completed 240 days continues service. He has also submitted that from the date of termination, in last preceding 12 months also the petitioner workman has completed 240 days continuously and even according to the calender year also the workman has completed 240 days service. It is also case of the petitioner that even from the date of termination, he has completed 240 days and therefore, in any way from these three angles, the petitioner workman was in continues service with the respondent and completed 240 days service within meaning of Section 25 [B] of the Industrial Disputes Act, 1947. But this aspect has been grossly ignored by the labour court on account of misreading and misconception of law. The labour court has committed gross error while rejecting the Reference of the petitioner workman. Mr.Vasavada has also submitted that the petitioner workman was qualified for temporary post of Tracer and this aspect has been mentioned in award in para-6 on page.21. He also submitted that no doubt periodical appointments were given to the petitioner workman but said termination is prior to 1984 and therefore, provision of Section 2[oo][bb] of the Act is not applicable at all. Mr.Vasavada, learned advocate has relied on one decision of this Court reported in case of BHARAT HEAVY ELECTRICALS LTD, BARODA V. R.V.KRISHNA RAO reported in 1990 [1] LLJ pg.87. Therefore, Mr.Vasavada, learned advocate submits that it is case of clear and apparent

error on the face of the record which requires to be interfered by this Court while exercising the powers under Article 227 of the Constitution of India.

#. Learned advocate Mr.M.G.Doshit appearing on behalf of the respondent Board has submitted that the Board has already filed affidavit and merits has already been disclosed by the respondent Board in said reply. However, Mr.Doshit has submitted that award passed by the Labour Court is perfectly legal and valid and no error has been committed by the labour court while rejecting the Reference of the petitioner. Mr.Doshit, learned advocate also submits that this Court is having very limited jurisdiction under Article 227 of the Constitution of India and this Court cannot interfere with the award unless any jurisdictional error is pointed out before this Court committed by the Labour Court. He also submits that the petitioner workman has not completed continuous service within the meaning of Section 25-B of the Industrial Disputes Act, 1947 as periodical appointments were given and thus, every appointment amounts to new engagement of the petitioner workman and in between there was break and in some cases, the break was for one month or so and therefore, such working cannot be considered to be continues service of the petitioner workman. Mr.Doshit, learned advocate also submits that if the petitioner workman has not worked continuously and completed 240 days continuously, then there is no need to comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947. He also submits that relationship of employer and employee is required to be established on each occasion and if the workman is appointed temporarily or ad hoc basis, then there was no obligation on the part of the employer to provide work continuously. As and when work was available, the workman was appointed on the post in question temporarily and therefore, he was not in continues service, meaning thereby, not rendered continues service with the respondent Board. Mr.Doshit also submits that service of workman has been terminated by afflux of time and there was no question of termination of service by the employer but employment automatically came to an end as specified in the appointment order was operated. He also submitted that Sankheda Project Work was carried out by the Board and the work was over in 1988 and therefore, services of the petitioner workman has been terminated rightly by the Board. Mr.Doshit has also submitted that Rural Electrification Programme, which was financed by Government of India and on that basis, work was carried out by the respondent Board. It is submitted by the

respondent that the petitioner workman was not appointed on regular establishment after due procedure of selection and the terms and conditions set out in the appointment orders also required to be considered. He also submits that on each occasion appointment orders were given after considering the application of the petitioner and on that basis, appointment orders were issued in favour of the petitioner workman. Therefore, a moment said period was over prescribed in the appointment order, relationship between employer and employee automatically came to an end. Therefore, provisions of Section 25[B] and 25[F] of the I.D.Act are not violated by the respondent Board and the labour court has rightly appreciated the facts on record. The labour court has given cogent reasons in support of the conclusion and therefore, there is no error apparently on the face of the record which in any way does not require to be interfered with by this Court while exercising the powers under Article 227 of Constitution of India. Learned advocate Mr.Doshit has also pointed out that during pendency of the Reference, some suggestion was made and on that basis, some offer was given to the petitioner for workman but the workman has refused to accept such offer from the respondent Board and therefore also, he is not entitled to any relief in the present petition.

#. I have considered submissions made by the learned advocates on behalf of the respective parties. Before the Labour Court, the petitioner workman has challenged the termination order dated 3rd December, 1982. The Reference has been made by the concerned authority to the Labour Court for adjudication whether the termination order is legal and valid or not, and if yes, ultimately what relief the petitioner workman is entitled. Therefore, it is the duty of the labour court to examine the legality and validity of the termination order only. Before the Labour Court, the petitioner workman has filed statement of claim vide Exh.41 and written statement was filed by the respondent Board vide Exh.32. Thereafter, both the parties have placed on record written arguments vide Exh.53 / 56. The petitioner workman has filed affidavit vide Exh.15 and thereafter cross examination by the respondent. On behalf of the respondent Board, one witness Mr.Pandya was examined at Exh.44 and thereafter, the labour court has considered the merits. However, both the parties have produced certain documents before the labour court. The petitioner workman has annexed Annexure-B pg.30 and 31, wherein working days are shown from the date of appointment is shown as 5th June, 1981 upto 30th June, 1982 and total days so calculated come to 299 days. On next pg.31, it is seen that the working

days are from 4th November, 1981 to 3rd December, 1982 and the working days so calculated come to 321 days completed by the petitioner workman. It is noticed that this calculation has been placed on record and incorporated in the petition by the petitioner in para-9 of the memo. As per details of actual workings given in para-9 of the petition which reveals that the workman had worked from the date of appointment 6th June, 1981 till 5th June, 1982 which comes to total days 278. Considering the working days given by the petitioner in para-10, which shows that in a calender year, the petitioner had also worked for 273 days for the period from January, 1982 till December, 1982. Further, as per the details given in para-11 of the petition, it is seen that the petitioner had worked for 300 days from 4th December, 1981 to 3rd December, 1982 i.e. the period 12 months preceding from the date of termination. Thus, by giving these details, the petitioner has justified that even from any ratio, the petitioner has worked for more than 240 days in continues service during the period of one year and thus, the petitioner has completed 240 days continues service with the respondent Board from any angle. It is also case of the petitioner that even from the date of termination in last preceding 12 months or even in a calender year or from the date of appointment the petitioner has completed 240 days continuously with the respondent Board. Therefore, considering these details and the fact the details are not disputed by the respondent Board in their reply because of the fact that before the labour court, appointment orders were produced by the petitioner vide Exh.11, the labour court has though considered that the factual aspects but come to the conclusion that during this period in question, there was break of two or three days or on some occasions, there was break of one month and accordingly, the labour court has concluded that this period cannot be considered as continues service rendered by the workman. To consider this issue, it is first of all relevant to consider and read the provisions of sub Sections and Section 25[B] of the Industrial Disputes Act, 1947 which is reproduced as under:

"25-B Definition of continues service - For the purposes of this Chapter -

[1] a workman shall be said to be in continues service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock out or a

cessation of work which is not due to any fault on the part of the workman;

[2] where a workman is not in continues service within the meaning of clause [1] for a period of one year or six months, he shall be deemed to be in continues service under an employer -

[a] for a period of one year, if the workman, during a period of twelve calender months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

[i] one hundred and ninety days in the case of a workman employed below ground in a mine; and

[ii] two hundred and forty days, in any other case;

[b] for a period of six months, if the workman, during a period of six calender months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

[i] ninety-five days, in the case of a workman employed below ground in a mine; and

[ii] one hundred and twenty day, in any other case.

#. Thus, sub Section [1] of Section 25-B provides that workman shall be said to be in continues service for a period, if he is for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock out or a cessation of work which is not due to any fault on the part of the workman, whereas, sub section [2] provides that where a workman is not in continuous service within the meaning of clause [1] for a period of one year or six months, he shall be deemed to be in continuous service under an employer, sub clause [a] for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. Thus, considering Section 25-B of the

Industrial Disputes Act, 1947, if the workman has remained in continuous service with the employer and his service has been interrupted by any reason provided in Section and he was not continued in service but he had rendered actual working of 240 days, then service has to be considered continuously. It is necessary to note that Section 25-F requires that no workman employed in any industry who has been in continues service for not less than one year under an employer shall be retrenched by the employer only on conditions mentioned in sub clause [a] to [c] are satisfied. Therefore, if both these Sections are read together, which clearly suggests that if the workman has completed continues service and not interrupted by reasons provided under sub Section [1], then there is no need to comply actual working of 240 days for getting the benefits under Section 25-F of the Industrial Disputes Act, 1947, meaning thereby, if the workman has satisfied requirements of provisions of Section 25-B[1], then there is no need to completion of 240 days for getting benefits of Section 25-F of I.D.Act. Therefore, considering the facts of the present case, the petitioner workman has satisfied requirements of both sub sections [1] and [2] as per the undisputed details given in Para-9, 10 and 11. The contents of para-9 to 11 of the petitio Memo also reveals that from any such ratio and / or from any angle, the requirement of working days as provided under the Section 25-B has been satisfied by the petitioner. It is pertinent to note that the details given by the petitioner showing working days, has not been disputed by the respondent. Therefore, considering this factual aspects of the matter which admittedly not disputed by the respondent, there is no reason to disbelieve that the petitioner workman was not in continuous service with the employer and therefore, workman had completed actual working of 240 days during the tenure of his employment with the respondent Board. Therefore, provisions under Section 25-F would be applicable in case of the petitioner but facts of the present case, non compliance of Section 25-F of the Act has not been disputed by the respondent Board and therefore, obviously the order of termination becomes ab initio void. This question has been examined by this Court in case of MOTI CERAMIC INDUSTRIES V. JIVUBEN RUPABHAI & ORS reported in 2000 [2] GLR 1558. This Court has observed that mere fact that the workman had not worked for 240 days in service in some year/s during his employment, would not debar him from claiming entire amount of retrenchment compensation as provided under Section 25-F of the I.D.Act. Mere fact during some years in his long period the workman had not worked for 240 days, is not an answer to deprive him of the retrenchment

compensation by ignoring the entire period. Once, it is proved or found that the workman is in continuous service, then it is wholly immaterial whether he has worked for particular number of days in a particular year. The contingency which demands the worker to work for period of 240 days as provided under sub Section [2] of Section 25-B of the Act, would come into play provided the workman is not in continuous service as required under Section 25-B[1] of the Act. The relevant discussion in para-10 and 13 of the said decision are reproduced as under :-

"10. In view of the above provisions, it is clear that sub section [1] of section 25-B of the act provides that the workman shall be said to be in continous service for a period if he is, for that period, in uninterrupted service. Continues service would be interrupted only by two modes and that is by workman leaving the employment or employer terminating his service by dismissal or discharge. Mere absence of the workman without obtaining prior leave for a days would not put an end to the continues service of a workman. Sub section [2] opens with the words "where a workman is in continuous service within the meaning of sub clause [1]" and these words unmistakably indicate that the legislature has desire and intention to cover the cause even of those workman who were not in continuous service for the purpose of retrenchment. Mere fact that the workman had not worked for 240 days in some year/s during his long employment would not debar him from claiming entire amount of retrenchment compensation as provided under Section 25-F of the I.D. Act. Mere fact that during some years in his long period, the workman had not worked for 240 days is not an answer to deprive him of the retrenchment compensation by ignoring the entire period. Once it is proved and / or found that the workman is in continues service, then, it is wholly immaterial whether he has worked for particular number of days in a particular year. The contingency which demands the worker to work for a period of 240 days as provided by sub section [2] of Section 25-B of the Act would come into play provided the workman is not in continues service as required under Section 25-B of the Act."

Both, on principles and on precedent, it must be held that Section 25-B[2] provides a situation

where the workman is not in employment for a period of 12 calender months but has rendered service for a period of 240 days within the period of 12 calender months and commencing and counting the backward from the date of retrenchment, if he has, he would be deemed to be in service for the purpose of Section 25-B and Chapter V-A and once it is found that the workman is in continues service under Section 25-B[1] of the Act and the workman is satisfying the conditions and contingency mentioned in the said sub sec [1] then it is wholly immaterial whether he has worked for a particular number of days in a particular year. Contingency which demands the worker to work for a period of 240 days as provided by sub section [2] of Section 25-B would come into play provided the workman is not in continues service as required under Section 25-B [1] of the I.D.Act.

13. Therefore, according to my view, if the workman is satisfying sub clause [1] of Section 25-B of the I.D.Act, then, it is not necessary for the workman to satisfy the deeming provision which has been made under sub clause [2] of Section 25-B of the I.D.Act. Therefore, considering the provisions of Section 25-B of the I.D.Act, it becomes clear that no workman employed in any industry who has been in continues service for not less than one year under an employer can be retrenched by that employer unless the employer has to satisfy condition precedent mentioned in sub clause [a] to [c] of Section 25-F of the I.D.Act.

#. The contention which is raised by the respondent that the petitioner workman was working periodically and relationship between employer and employee remained in existence so long as periodical appointment was continued. It is also submitted that a moment, period of such periodical appointment is over and come to an end, relationship of employer and employee automatically comes to an end. The gap in between two appointment orders that has been considered as break in service and such service has not been treated as continuous service of the petitioner workman. This aspect has been wrongly examined by the labour court. According to my opinion, the labour Court has committed gross error in coming to the conclusion by misreading Section 25-B of the I.D.Act. Therefore, this is clear misconception in the mind of the

labour court while not properly appreciating Section 25-B of the Act looking to the undisputed facts on record between the parties in respect of the working days and period of service. However, from undisputed factual aspects of the matter, it is noticed that the workman has actually worked and completed 240 days continuously in service in a period of one year. Therefore, whatever artificial break/s given to the petitioner workman by the respondent Board for a period of two or three days or on some occasions even for one month, for which, sufficient safeguards provided under Sub Section [2] of Section 25-B of the I.D.Act. The labour court has decided the entire Reference on the footing that the petitioner workman was not appointed on regular establishment and he has not worked against clear vacancy of the post in question. Therefore, whatever service rendered by the workman, cannot be considered to be continues service under Section 25-B of the Act. When the dispute was raised by the workman, whereby it was, in fact, not claimed permanency from the respondent. Admittedly, the petitioner has raised dispute, was against and relating to termination but the labour court has considered that the aspects that workman was not appointed on regular establishment and he was not regularly selected candidate. However, it is contended by the respondent that the workman was once interviewed but he was not selected by the Committee and the workman was working temporary and on ad hoc basis and therefore, whatever service rendered by the petitioner on adhoc basis, same cannot be considered to be continues. Therefore, considering this contention the question arises that whether a person appointed on temporary basis or adhoc basis if completed continues service whether such workman covers under Section 2[s] of the Act or not. This aspect has been examined by the Madhya Pradesh High Court in case of MADHYA PRADESH TEXT BOOK CORPORATION V. KRISHNAKANT PANCHOLI reported in 1998 [80] FLR pg.54., wherein it is clearly held that all type of workmen including daily rated temporary or ad hoc worker covered under the definition of Section 2[s] of the I.D.Act, 1947. Whether the daily rated are entitled to protection under Section 25-F of the I.D.Act or not. This aspect has also been examined by the Apex Court in case of RATTAN SINGH VS. UNION OF INDIA reported in 1997 [11] SCC pg.396. The Apex Court has observed that the daily wager are entitled to protection of Section 25-F of the I.D.Act if the services of daily rated has been terminated, Section 25-F is applicable and daily wager is also entitled to relief in case Section 25-F is violated by the employer. Relevant observations made in para-3 are quoted as under :-

"3. We find merit in the said submission of Shri Ashri. From the dates mentioned in the judgment of the first appellate court dated 22-1-1985, it appears that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of Section 25-F of the Act and the said protection could not be denied to him on the ground that he was a daily rated worker. It is not the case of the respondents that the provisions of Section 25-F of the Act were complied with while terminating the services of the appellant. In these circumstances, the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000 be paid to the appellant in lieu of compensation for back wages as well as reinstatement. This amount is being paid in full and final settlement of all the claims of the appellant. The said amount shall be paid within two months. The appeal is disposed of accordingly. No costs."

#. Further, the Division Bench of this Court has considered to the effect of non compliance of Section 25-F of the Industrial Disputes Act, 1947 in case of M.P.Ramanandi v. Gujarat Warehousing Corporation reported in 1985 [2] GLR pg.1040. Relevant observations of the division bench of this Court in para- 2 & 3 are referred as under :

" XXXX ... Section 25 reads as follows :

"25-F. No workman employed in any industry who has been in continuous service not less than one year under an employer shall be retrenched by the employer until -

[a] the workman has been given one month's notice in writing indicting the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :
Provided that no such notice shall be necessary,

if the retrenchment is under an agreement which specifies a date for the termination of service;

[b] the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

[c] notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government under notification in the official Gazette."

The marginal note of Section 25-F clearly states "Conditions precedent to retrenchment of workman". Admittedly those conditions have not been followed before the discharge was effected in this case. We have already held that this is a case of retrenchment and that position is accepted by the labour Court. The respondent has to concede this position since the action initiated against the petitioner is under Regulation 10 of the Regulations referred above. In Mohan Lal, Supreme Court has specifically held that where pre requisite for valid retrenchment as laid down in Section 25-F has not been complied with, retrenchment bring about termination of service is ab initio void, continuing the Supreme Court has held in paragraph 16 of its judgment :

"16. Appellant has thus satisfied both the eligibility qualifications prescribed in Sec 25F for claiming retrenchment compensation. He has satisfactorily established that his case is not covered by any of the excepted or excluded categories and he has rendered continues service for one year. Therefore, termination of his service would constitute retrenchment. As pre condition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continues service."

In yet another judgment of the Supreme Court reported in Management of Karnataka State Road Transport Corporation, Bangalore v. M.Boraiah and another [AIR 1983 SC 1320] the Supreme Court had occasion to consider the retrenchment of a probationer. In that case also the Supreme Court

has held :

"13. Once the conclusion is reached that retrenchment as defined in Section 2[oo] the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of Sec.25F of the Disputes Act had not been complied with in these case. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non compliance of Sec 25-F of the Disputes Act in a case where it applied made the order of termination void. The High Court, in our opinion, has therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. These appeals are dismissed. There would be one set of costs consolidated hearing fees is assessed at Rs.5,000/-."

Thus from the abovesaid judgments it is clear that if the precondition for a valid retrenchment hasnot been satisfied, the termination of service is ab initio void, invalid and inoperative and that the persons whose services have been terminated must be deemed to be in continuous service.

3. Inasmuch as we have already held that the respondent has not followed the condition requisite for terminating the service of the petitioner herein, the order of termination Exh.30 is ab initio void and hence the labour court is completely in error when it accepted the order of termination and directed the payment of retrenchment compensation as the only relief the petitioner is entitled to have. Such an order of the Labour Court, in our opinion, is without jurisdiction and contrary to the law laid down by the Industrial Dispute Act and hence this Court has ample jurisdiction to interfere with such patently erroneous and illegal order for the purpose of giving relief to the petitioner herein. Mr.Trivedi submitted that the matter may be remanded to the Labour Court for the purpose of determining the amount payable as backwages.

We do not think that this argument can be countenanced inasmuch as no contention has been taken in the written statement that he was actually engaged in some other job during this period and inasmuch as the order passed under Exh.30 is ab initio void.

#. In the present case, it is not the case of the employer that at the time of passing of termination order or at the time of completion of period specified in the appointment order, Section 25-F has been complied with by the employer. It is undisputed between the parties that at the time of termination on the basis of such orders of appointment to the petitioner, Section 25-F has not been complied with. In such situation, view taken by this Court in case of GRAM PANCHAYAT, DAMNAGAR V. SHARADKUMAR D. ACHARYA reported in 1994 [1] GLR 579. This Court has considered this aspect that moment Section 25-F has been violated, then termination order becomes ab initio void and the workman is entitled to normal relief of reinstatement with consequential benefits. I would like to refer the relevant observations made in para-4, 5 and 6 as under :-

"4. The first contention is concluded by the Supreme Court in the case of Karnataka S.R.T. Corporation v. M. Boraiah, 1984 [1] SCC 244, wherein it has been held that Sec.2[oo] covers every case of termination of service except those which have been embodied in the definition and, therefore, discharge from employment or termination of service of a probationer, would also amount to retrenchment and compliance with the requirements of Sec.25-F in the case of such termination is essential and necessary consequence of non compliance with Section 25F would render the termination void. Therefore, the first contention must fail.

5. The second contention is also covered by the provision of Sec. 25-B[2][a] of the I.D. Act, as held by the Supreme Court in the case of Digwadih Colliery v. Workmen, AIR 1966 SC 75. It is true that workman had not been in continuous service for a period of full 12 months or one year and in fact his service was of about 9 months only. However, the deeming provision of Sub Section [2] of Section 25-B is applicable in the present case, which provides that a workman shall be deemed to be in continuous service for a period of one year, if the workman, during the

period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. In the present case, the workman has worked for more than 240 days in the preceding 12 calendar months and, therefore, he is deemed to be in continuous service for a period of one year and, therefore, retrenchment compensation was payable and it is admittedly not paid. Second contention also, therefore, must fail.

6. Thirdly, it is submitted that the post has been abolished and therefore, reinstatement could not have been granted. It is true that the Panchayat had abolished the post as a measure of economy and terminated the services of the workmen. However, the Panchayat did not fulfil the requirements of Sec.25 F and therefore, termination is illegal and void and he has to be reinstated and if necessary, the post has to be recreated to comply with the order of reinstatement. It is not open to an employer to contend that since the employer had abolished the post, the order of reinstatement could not be complied with. It would amount to giving licence to the employer to illegally terminate the services and to render the Court helpless in granting reinstatement. That would be perpetuating illegality and injustice. Therefore, petitioner's third contentions has no merit."

##. It is also contention raised by the respondent Board that such appointment orders given to the petitioner were for specific period and as per the terms and conditions set out therein, periodical orders issued by the respondent Board in favour of the petitioner workman. Therefore, his service came to an end by afflux of time. It is also case of the respondent Board that therefore, it cannot be considered to be a retrenchment within meaning of Section 2[oo] of the Industrial Disputes Act, 1947. No doubt, this contention has been raised by the employer with a view to point out that periodical appointment came to an end by afflux of time and therefore, termination effected against the petitioner workman cannot be said to be retrenchment while keeping in mind the provisions of Section 2[oo][bb] of the Industrial Dispute Act, 1947. However, it is pertinent to note that this Section 2[oo][bb] is amended portion i.e. [bb] of the Section 2[oo] came into force from date 18th August, 1984 and this amendment has not been

effective with retrospective effect. Secondly, the terminated effected against the petitioner workman was in the year 1982 and therefore, naturally, this amended portion [bb] in sub Section 2[oo] cannot be made applicable to the facts of the present case. This aspect has been examined by the Division Bench of this Court in reported decision in case of BHARAT HEAVY ELECTRICAL LTD BARODA VS. R.V. KRISHNA RAO reported in 1990 [1] LLJ pg.87. The relevant observations made by the division bench of this Court in para-5 & 6 of the said decision are reproduced as under :

"5. We shall deal with these contentions seriatim

Contention No.1 : Mr.Patel Placing reliance on the decision in the case of Buckingham and Carnatic Co. Ltd. v. Venkatiah [1963-IILLJ-638] contended that BHEL Leave and Holiday Rules had to be read along with the appointment order of the respondent - workman and as per Rule 9.13 of the said Rules, if an employee remained absent from duty without leave for more than 15 consecutive days, he shall be presumed to have left the services of the company of his own accord without notice and his name will accordingly be struck off the roll of the company. Therefore it has to be held that the termination of service of the workman was as a result of stipulation in that behalf contained in the appointment order itself and that was squarely covered by the exclusion clause contained in Section 2[OO][bb] of the Industrial Disputes Act, 1947, and hence the said action would not amount to retrenchment on the part of the petitioner. I tis not possible to agree with the contention of Mr.Patel for the simple reason that the respondent's services were terminated and his name was struck off the record of the employees with effect from 10th June, 1980. At that time clause [bb] of Sec.2[OO] was not on the statute book. It was inserted by Amending Act 49 of 1984 with effect from 18th August, 1984. When confronted with this situation Mr.Patel submitted that the said amendment is retrospective in nature. It is also not possible to agree with this contention for obvious reasons. Section 2[00] as it stood prior to 18th August, 1984 read as under :-

"2[OO]" "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

[a] voluntary retirement of the workman; or [b] retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[c] termination of the service of a workman on the ground of continued ill health".

The Supreme Court in a catena of decisions had interpreted these provisions to mean that termination of services of a an employee for any reason whatsoever which was covered by any of the exclusion clauses [a], [b] and [c] in the aforesaid definition would amount to retrenchment. The path - breaking decision on the point was rendered in the case of State Bank Vs. N.S.Money, [1976-I-LLJ-478]. Interpreting Sec.2[OO] as it stood prior to 18th August, 1984 in the light of hits relevant exclusion clauses, Krishna Iyer, J. speaking for the Supreme Court in the aforesaid decision, made the following pertinent observations in para-9 of the report [p.482]:

"The key to this vexed question is to be found in Sec.2[OO] which reads as under : XXXXX For any reason whatsoever- very wide and almost admitting of no exception ... To retrench is to cut down. You cannot retrench without trenching or cutting ... Section 2[OO] is the master of the situation and the Court cannot truncate its amplitude."

In para 10, it has been observed :

"A break down of Sec.2[OO] unmistakably expands the cemantics of retrenchment "Termination ... for any reason whatsoever" are the key words. Whatever

the reason, every termination spells retrenchment. So, the sole questions is, has the employee's service been terminated. Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination, howsoever produced."

This decision was consistently followed by the Supreme Court in the later decisions. A few of them may be mentioned at this stage.

[1] Hindustan Steel v. State of Orissa, [1977-I-LLJ-I].
[2] Santosh Gupta v. State Bank of Patiala, [1990-II-LLJ-72]
[3] Management of K.S.R.T.Corporation v. M. Boraiah [1984-I-LLK-110]
[4] Mahanlal v. Management, Bharat Electronics Ltd.[1981-II-LLJ-70]

In view of this constant trend of decisions of the Supreme Court interpreting the then existing provisions of the term `retrenchment' as found in Sec.2[oo] the legislature intervened by enacint further exclusion clause, in the shape of clause [bb]. It, therefore, becomes obvious that the legislature wanted to remedy the difficulty which was found in the them existing exclusion clauses [a],[b] and [c] in Sec.2[oo] and that is previously the reason why a substantive provisions exclusion from the operation of term `retrenchment', those actions which were covered by clause [bb] was enacted. It is impossible to hold that such a substantive exclusion provision was retrospective in nature. It is obvious that the legislature while enacting the safe provisions has not expressly made it retrospective.

6. Then remains the question of its retrospectively, if at all, by a necessary

implication. In the settings of judicial history centering round interpretation of the then existing clauses of Sec.2[oo] aforesaid, it cannot be said that sub clause [bb] was retrospective even by necessary implication. It is now well settled that if the provisions is merely declaratory, it may be retrospective. But if it is a remedial provision, it is prospective by the legislature, or it is to be so held by necessary implication. In this connection, it is profitable to look at the decision of the Supreme Court in the case of Central Bank of India v. Their Workmen [AIR] 1960 SC 12 which was cited by Mr.Patel for the petitioner in support of his contention. At pg.27 it was observed in para-29 of the report that "for modern purpose a declaratory Act may be defined as an Act to remove doubts existing as to the common law or the meaning or effect of any statute. Such Acts are usually held to be retrospective." It has been observed that "A remedial Act on the contrary, is not necessarily retrospective; it may be either enlarging or restraining and it takes effect prospectively, unless it has retrospective effect by express terms or necessary intendment". It is clearly found on the facts of the present case that by inserting the sub clause [bb] in the exclusion clauses of Sec.2[oo] legislature wanted to restrict the meaning of the term `retrenchment' as interpreted by the Supreme Court in the light of the prior existing provisions of Sec.2[oo] defining the term `retrenchment'. Consequently, such a substantive provision imposing additional restriction on the meaning of the term `retrenchment' cannot be construed to be retrospective by necessary intendment. It being purely remedial measure and seeking to displace series of decisions of the Supreme Court on the point, must be held to be prospective in nature and will apply to only those terminations which take place after this provision was brought on the statute book. Contention No.1 of Mr.Patel to the contrary is, therefore, rejected. Before parting with this discussion, it is profitable to mention that the Patna High Court has also taken the same view in the case of Arun Kumar v. Union of India, 1986 Lab.IC 251. We respectfully concur with the said view."

##. I have perused the award passed by the labour court.

The reasons given by the labour court in para-6 which transpires that the labour court has considered the affidavit vide Exh.15 of the petitioner workman, so also the evidence of the respondent Board at Exh.44. Ultimately, the labour court has come to the conclusion in para-9 that the petitioner had worked temporarily or on ad hoc basis on the post of Tracer but he has not worked against vacant or permanent post of Tracer. Therefore, considering evidence which was on record, the labour court has come to the conclusion that the petitioner has not proved that there was any permanent post of Tracer available in Sankheda Division. Thus, the labour court has relied upon the evidence of the respondent Board and come to the conclusion that the petitioner had not worked against permanent post. The labour court has also considered the appointment letters produced by the petitioner at Exh.11 and the labour court has discussed each and every appointment order for specific period and ultimately, service has been terminated with effect from 3rd December, 1982. Therefore, the labour court has come to the conclusion that the petitioner workman has accepted the terms and conditions of the appointment order and at the relevant time, the workman had not raised any objection against said terms and conditions during the period of service and looking to the appointment order, his services came to an end by afflux of time, for that, no objection was raised by the petitioner. Therefore, considering the breaks in between two orders of appointment issued in favour of the petitioner, the labour court has come to the conclusion that the workman can not be said to be in continuous service as he was working in temporary or adhoc post of Tracer which was wholly temporary arrangement made by the respondent Board in Sankheda Division. The labour court has considered Section 25-B of the I.D.Act and the sub sections [1] and [2] therein, but according to my opinion, the observations made by the labour court in para 12 is nothing but clear misconception of law and misreading of Section 25-B of the Act. If the provisions of Law are not properly interpreted and not understood in its spirit by the labour court, there was clear misconception in the mind of the labour court in respect of the statutory provisions of the Act, which in my opinion, is clear error committed by the labour court while not properly understanding the relevant provisions of law on which the Reference of the petitioner was based. It is also noticed that after considering Section 25-B of the I.D.Act, 1947 and even break of one month in between two appointment orders, the labour court has come to the conclusion that because of such break in between two

orders, it cannot be considered to be continuous service rendered by the petitioner during the tenure of his appointment. The labour court has wrongly construed and interpreted that the continues service means not a single break in service and if it is any break of single day in service tenure, same cannot be considered to be continues service. Such conclusion of the labour court is contrary to the statutory provisions of the Law and that has considered to be jurisdictional error committed by the labour court by not exercising the jurisdiction when provisions of Section 25-B & F are violated by the employer at the time of terminating service of the petitioner workman. The entire award has been based and same has been passed mostly on the aspect that as to whether the petitioner has completed 240 day continuously on the post in question or not. But from factual point of view, the reality is otherwise. It also requires to be noted that before the labour court it was not at all the question required to be adjudicated by the labour court when the challenge before the labour court was to examine the legality and validity of the termination order. Therefore, the conclusion of the labour court that the petitioner workman has not completed continues service and rendered 240 days, is clearly erroneous and contrary to Section 25 [B] & [F] of the Act itself.

##. It is also necessary to note one more aspect that if the services of workman, let it be temporary employment or daily rate employee but in the event of termination by the employer while giving periodical orders or appointment on daily wage, then also, the question is whether such termination is justified by the employer. Such termination against the petitioner, considering Section 2[oo] of the I.D.Act, 1947, amounts to retrenchment because the case of the petitioner does not fall under exception provided under Section 2[oo] of the I.D.Act, 1947. Considering the facts of the case on hands, no doubt, the contention raised by the respondent Board that service of the petitioner has come to an end by afflux of time but as such, that termination is required to be justified by the employer when challenge against such termination is raised by the workman concerned. Therefore, when termination order is challenged by the workman, then it is the duty of the respondent Board to justify such termination by giving reason in support of termination. If termination is not justified by reason, same can be considered to be arbitrary and hit by Article 14 and 16 of the Constitution. Termination is required to be justified by reasoned order. Even otherwise, specific provisions are provided under Section 25-F[1] to the effect that no

workman employed in any industry who has been in continues service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice. Therefore, even in case of compliance of Section 25-F at the time of termination by employer, the labour court can go further while considering the question whether termination is justified by the employer or not. Therefore, the labour court can consider this second aspect even after compliance of sub Section [1] of Section 25-F of the Act by the employer. In such circumstances, when termination is not justified, the labour court can set aside such termination on the ground that termination is unjustified and not supported by reason by the employer. Therefore, the legislature while enacting the statute itself under Section 25-F, has not given licence to the employer to terminate service of the workmen if they are not liked to be continued in employment by merely giving notice of one month or notice pay or retrenchment compensation. On the contrary, the Statue itself has provided sufficient safeguards to the workmen that at the time of termination, such procedure being condition precedent and same is required to be followed by the employer. In case of violation of such procedure and condition precedent, such order of termination becomes null and void. Even in case of compliance of such procedure by the employer, the second question which requires to be examined by the labour court while going to the extent that whether such termination is justified by satisfactory reasons given by the employer before the labour court or not. In the instant case, obviously all these questions were required to be examined by the labour court especially when termination is challenged by the workman on the ground that Section 25-F though not complied with and termination is also not justified by reasoned order. This aspect has been considered by Allahabad High Court in case of PURSHOTTAM SINGH VS. COLLECTOR, HAMIRPUR AND OTHERS reported in 2000 [2] CLR pg.569. Relevant observations made by the Allahabad High Court in para-3 & 4 are referred as under :-

"3. Heard Learned counsel appearing for the petitioner and the learned Standing Counsel.

A Division Bench of this Court in Vimal Chand Pandey V. Engineer-in-Chief, Public Works Department, 2002 [1] UPLBEC 240 held that "in our

opinion, when a person is appointed on daily wage or on temporary basis then the authority concerned must make up its mind within two or three years of the appointment whether to confirm the said employee or to terminate his service if he is incompetent, but keeping a person on temporary or on daily wage basis for a long period is arbitrary and not justifiable".

4. The petitioner was admittedly engaged as Peon on 1.8.1990 on daily wages basis. He worked till 5.12.1995 i.e. for about five years and four months. It is admitted that other persons engaged in the office on daily wages basis are still working. Hence, in my opinion, the petitioner should be allowed to work and regularised as Peon in the office of Mining Officer, Collectorate, Hamirpur."

##. Similarly, said question is also again examined by the Allahabad High Court in case of N.R.C. EMPLOYEES UNION, MUMBAI VS. N.R.C. LTD, MUMBAI reported in 2000 [2] CLR pg.576, wherein it is held that if services of workmen are terminated without assigning any reason or without any speaking and reasoned order without affording an opportunity of hearing to the workman, same is unjust, illegal and liable to be quashed and set aside.

##. It is also contention Mr.Doshit, learned advocate on behalf of the respondent that this petition is filed only under Article 227 of the Constitution of India and therefore, this Court cannot interfere with the matter like an appellate authority and the scope is that in case of if any jurisdictional error is found on record, then only this Court can interfere with the finding of the labour Court. So far this contention of jurisdiction of this Court under Article 227 of the Constitution, is concerned, considering the judgments of the Apex Court recently the Division Bench of Jaipur Bench of Rajasthan High Court has examined this issue while dealing with the case of PUNJAB NATIONAL BANK V. PUREWALL AND ASSOCIATES LTD reported in AIR 2002 Rajasthan 13. Relevant observations made in para 19 and 20 are quoted as under :-

"19. In the case reported in [1997] 5 SCC 76 : [AIR 1997 SC 2077] [Achutananda Baidya V. Prafullya Kumar Gayen] it has been held by the Supreme Court [At p.2079 of AIR] :-

"The power of superintendence of the High

Court under Article 227 is not confined to administrative superintendence only but such power included within its sweep the power of judicial review. The power and duty of the High Court under Art. 227 is essentially to ensure that the Courts and tribunals, inferior to High Court, have done what they were required to do. The High Court can interfere under Article 227 in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior Court, the High Court should not quash the Judgment of the subordinate Court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate Court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse. If the evidence on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at the inferior Court or tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction under Article 227, the High Court will be competent to quash such perverse finding of fact. The High Court, in such circumstances, will be competent to consider the validity of the finding of fact assailed before it with reference to materials on record. In this case, the High Court has rightly held that the appellate authority came to the finding of non existence of oral agreement of recoveyenace without

considering the evidence on record."

20. In the case of Baby V. Travancore Devaswom Board reported in [1998] 8 SCC 310 : [AIR 1999 SC 519] it has been held that the High Court has powers under Article 227 of the Constitution of India to quash the orders passed by the tribunals if the findings of fact had been arrived at by non consideration of the relevant and material documents the consideration of which could have led to an opposite conclusion. The power of the High Court under the Constitution of India is always in addition to the powers of revision."

In view of observations made by the Apex Court in above referred two cases, recently, the powers of this Court under Article 227 of the Constitution has been examined in detailed in para 21 of the aforesaid decision by the Jaipur Division Bench of the Rajasthan High Court. The observations since directly covering the contention of jurisdiction of this Court under Article 227 of the Constitution as raised by Mr.Doshit on behalf of the respondent is answered and therefore, observations made in para-21 of above referred judgment are quoted as under:

"21. From the aforesaid decisions of the Apex Court it appears that although in previous years the Apex Court was inclined to hold that the jurisdiction of the High Court under Article 227 of the Constitution merely encompassed a revisional jurisdiction but in the subsequent decisions it has been repeatedly held that the powers under Article 227 of the Constitution, which is a power of judicial superintendence, is a wide power vested in the High Court and such powers included within its sweep the power not only in cases where the Court erroneously assume jurisdiction but also in the case the order passed by the Courts or Tribunals, inferior to it, suffers from error apparent on the face of record as also in cases where the orders impugned represent an arbitrary or capricious exercise of the authority or discretion and even in cases where the order suffers from patent error or procedure or even in the cases where the exercise of powers represent a finding on the basis of no material or is likely to result in manifest injustice. On consideration of the decisions rendered by the Apex Court cited above, we are of

> the view that the High Court's jurisdiction under Article 227 of the Constitution of India is not confined to correct the jurisdiction under Article 227 of the Constitution of India is not confined to correct the jurisdictional error akin to Section 115 of the Civil Procedure Code; it is open to the High Court to interfere even with the finding of facts of the subordinate Court in exercise of the powers under Article 227 of the Constitution it it came to the conclusion that the said finding is without any evidence or has been arrived at on manifest misreading of the evidence thereby indulging in inappropriate exercise of jurisdiction or if conclusions are perverse. The High Court can always consider the validity of the finding of facts with reference to the materials on record. Therefore, we hold that the submission made by the learned counsel for the appellant that the powers of the High Court under Article 227 of the Constitution is confined to jurisdictional facts only and the High Court cannot go into the question of facts or record its own finding of facts in given circumstances, is not correct.

##. Considering above three decisions in respect of the powers and jurisdiction of this Court under Article 227 of the Constitution, this Court while exercising the powers under Article 227 of the Constitution can interfere with the finding of facts if the interior Court came to conclusion without any evidence or upon manifest misreading of the evidence and thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse. This Court can also exercise the powers under Article 227 of the Constitution in case of manifest injustice to the party and even while going to merits to find whether order is justified or not and such order of inferior Court can be interfered with if same is made without jurisdiction. In the facts of the present case, without appreciating the facts finding given by the labour court and without reappreciating the oral and documentary evidence by this Court but from the evidence as it is, this Court finds that the labour court has misinterpreted the Section 25-B and 25-F of the Industrial Disputes Act, 1947. Looking to the evidence produced and relied on by the labour court, while exercising the powers under Article 227 of the Constitution, this Court can examine [i] whether the law has properly applied by the labour court or not, [ii] whether the labour court has properly understood the Sections applied to the facts of the case or not. If the

case of the workman is squarely covered under the provisions of the law and the labour Court come to the conclusion that such provisions are not applicable to the facts on record as it is, then it is clear error of jurisdiction committed by the labour court while wrongly interpreting the law and misreading of the provisions of law. Resultantly, in the facts of the case, the labour court has in clear error come to the conclusion that the petitioner workman has not rendered continues service while considering the artificial break in between two orders treating it as gap between two orders. Thus, the labour court has clearly misunderstood the provisions of Section 25B and 25F of the I.D.Act. The labour court has not applied his mind and not read the Sections itself properly and not understood ingredients therein. Therefore, it can be inferred that the labour court is in clear error of grave dereliction of duty, fregnant abuse of powers which resulted into grave injustice to the petitioner. Therefore, in such situation, this Court is having powers to interfere with such award which resulted into miscarriage of justice and gross injustice to the petitioner.

##. Therefore, looking to the observations made by the Allahabad High Court and considering the facts of the present case and considering reply given by the respondent Board before the Labour Court as well as before this Court, there is no justification by reason in the orders passed by the respondent Board that services of the workman terminated on what ground. It has also come on record that Sankheda Division remained in existence and operation upto 1988. In the instant case, it is not disputed between the parties that the services of the petitioner workman came to an end by way of termination in the year 1982. Therefore, it becomes clear that though Sankheda Division was continued upto the year 1988, even though service of the workman terminated in the year 1982, for which, no justification provided for termination under challenge. It is also pertinent to note that the respondent has not proved nor it was the case of the respondent Board, which came on record that during pendency of Reference the respondent Board had offered the workman another post of Typist or the post of Tracer at Bhuj and same was not accepted by the petitioner workman. However, this averments are specifically denied by the petitioner in Rejoinder nor any other proof came on record either before the Labour Court or even before this Court. Therefore, such averments cannot be relied on and accepted by this Court. On the contrary, the petitioner in his Rejoinder states that he is ready and willing to work anywhere in Gujarat.

Therefore, considering the entire record and facts and circumstances of the case and considering the observations made by the labour court, this Court is of the clear opinion that the labour court has misread Section 25-B which amounts to misconception of law especially when said Section is applicable in the facts of the case. But the labour court has come to the conclusion contrary to the law and erroneously held that it is not applicable. Therefore, this is clear error found apparently from the face of the record, which ultimately, caused gross injustice to the aggrieved party. There seems to be a clear dereliction of duty on the part of the labour court, which calls for this Court to interfere with the finding of the labour court while exercising the powers under Article 227 of the India.

##. Therefore, considering all these aspects of the matter, according to my opinion, the labour court has committed gross error which amounts to grave injustice to the petitioner. Misreading of provisions of law and Sections itself resulted into misconception of law and the impugned award passed by the labour court in Reference No.612 / 1984 dated 2nd March, 1993 based on misread interpretation of provisions of law and clear misconception of law, requires to be quashed and set aside by this Court under Article 227 of the Constitution of India.

##. Now, when this Court has reached to conclusion that the award of the labour court impugned before this Court requires to be set aside and therefore, the question arises what relief the petitioner is entitled in the result. It is also pertinent to note that the petitioner in his Rejoinder states that he is ready and willing to work anywhere in Gujarat. Therefore, once the termination order is declared ab initio void and in violation of Section 25-F of the I.D.Act, 1947, naturally, the petitioner is entitled to reinstatement with continuity of service. At this juncture, this Court is also required to consider the issue of backwages simultaneously. Before the labour court, the petitioner workman has filed affidavit at Exh.15 as mentioned in para-7 of the award but no evidence has been discussed by the labour court whether petitioner deposed before the labour court or not. Moreover, it does not become clear that the workman remained unemployed during the interim period or not. However, considering the fact that the Reference filed before the Labour Court in the year 1984 and same was decided by the labour court in 1993, challenged before this Court in the year of 1993 and this Court is deciding this petition in 2002. Therefore,

considering the aspects of long span of pendency and the fact that the respondent Board is statutory authority and the petitioner workman was working temporarily on ad hoc basis against temporary post and rendered services for one and half year, in view of this Court, the observations of the Apex Court in para-17 and 18 in reported decision AIR 2000 SC pg.454 in case of Management of MCD, vs. Prem Chand Gupta, require to be referred on the aspect of the backwages with the facts and circumstances of this case. Relevant observations made in para-17, 18 and 19 of above referred decision are quoted as under :-

17. Learned counsel for the appellant-Corporation. Ms.Binu Tamta, in order to salvage the situation invited our attention to a decision of this Court in the case of Birla VXL Ltd. V. State of Punjab (1998) 5 SCC 632 : (1998 AIR SCW 3899 : AIR 1999 SC 561 : 1999 Lab IC 236) and submitted that when the appointment is given for a fixed period, on expiry of the said period the appointment would cease by afflux of time and it could not be said to be a retrenchment. In the aforesaid case, a two Judge Bench of this Court was concerned with appointment order given to the third respondent before this Court on 1-1-1983 which clearly stated that it was appointment for two years up to 31-12-1984. When the said termination by afflux of time took place, Section 2(oo) of the I.D.Act had already got amended by insertion of exception Clause (bb) therein which reads as under :

"termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or;"

Thus, it was a case of automatic termination of employment in the light of the stipulation contained in the appointment itself. Such termination could not be treated as retrenchment in the light of the excepted category indicated by Clause (bb) inserted in Section 2(oo) by the amending Act of 1984. It has to be kept in view that respondent-workman's termination was prior to 1984 amendment to Section 25-F. Hence, it was squarely governed by the ratio of decision of

this Court in case of The State Bank of India v. Shri N.Sundara Money (AIR 1976 SC 1111 : 1976 Lab IC 769) (supra). It is, therefore, not possible to agree with the contention of learned counsel for the appellant that termination of the respondent-workman on 29-4-1966 would not be retrenchment. It has also be seen that even though the earlier appointment of the respondent-workman was for one year from 5-5-1964 his reappointment from 1-10-1964 was not for a fixed period and on the contrary it continued up to 18 months and it was against a clear vacancy of a permanent post caused on account of the termination of another employee. Consequently, reliance placed by learned counsel Ms.Binu Tamta for the appellant Corporation on the aforesaid decision of this Court is of no avail to her. She then invited our attention to a later decision of this Court in the case of Rajasthan Adult Education Association v. Ashoka Bhatacharya (Km) (1998) 9 SCC 61: (1997 AIR SCW 4316 : AIR 1998 SC 336: 1998 Lab IC 420). In that case this Court was concerned with the termination of a probationer temporary servant on account of unsatisfactory performance. A probationer employee was found to have not satisfactorily worked during his probation and her services were terminated with effect from 31-5-1989. This is also a case where after the amendment of Section 2(oo) by insertion of Clause (bb) from 1984 such termination of probationer for unsatisfactory work would remain outside the sweep of Section 25-F read with Section 2(oo). In the present case, as seen earlier, the termination was years back of 29-4-1966 when Section 2(oo) (bb) was not on the statute book. Reliance was then placed by learned counsel for the appellant Corporation on a decision of a learned single Judge of the Gujarat High Court in the case of Sunilkumar S.P. Sinha v. Indian Oil Corporation Ltd., Delhi 1983 Lab IC 1139. This decision also can not be of any avail to her for the simple reason that the said decision proceeded on its own facts. In para 14 of the report, it has been clearly mentioned by the learned single Judge that the employee in that case was not a workman and again there was no evidence to show that all the requirements of Section 25-F were complied with for its applicability. It was a direct writ petition in the High Court and in absence of relevant data

the said section was held to be not applicable. The said judgment rendered on its own facts, therefore, can not be pressed in service in the light of clear findings of fact reached by the Labour Court in the present case, which have remained well sustained on record, as seen by us earlier for applicability of Section 25-F to the impugned termination of the respondent workman's services. As a result of the aforesaid discussion, it must be held that termination of the respondent workman's service on 29-4-1966 was violative of Section 25-F of the I.D.Act and was therefore null and void. The second point for determination in answered in affirmative against the appellant Corporation and in favour of the respondent workman subject to our decision about appropriate relief to be given to the respondent workman as will be indicated while considering the last point for determination.

Point No.3 :

18. We have now reached the stage for considering appropriate relief to be granted in the light of our findings on point no.2. Once it is held that termination of the respondent workman on 29-4-1966 was null and void being violative of Section 25-F of the I.D.Act, the logical consequence would be that he would be entitled to be reinstated in service with continuity and in normal course would be entitled to full back wages. However, in our view, on the peculiar facts of this case, it will not be appropriate to grant full back wages to the respondent workman even though he will be entitled to be reinstated in service of the appellate Corporation with continuity and all further consequential benefits on that score, save and except the ground of full back wages, as indicated herein below.

19. The reasons for non granting full backwages from the date of his termination of 29-4-1966 till actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29-4-1966 and after 33 years and more it is being set aside. To saddle the appellant Corporation and its exchequer, which is meant for

public benefit, with full backwages for entire period would be too harsh to the appellant Corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent workman is also not at fault as he was clamouring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant Corporation, being a public body, with the full backwages for the entire period of respondent workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent workman by the appellant Corporation. It is true that the respondent workman was always wiling to work but the could not be permitted to work so long as the termination order stood aginst him. The Labour Court as well s the learned Single Judge upheld that order. Only the Division Bench set aside that order. This Court at SLP stage itself while granting leave stayed reinstatement order on 17-11-1907. Tow more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant Corporation, a public body, with the burden of entire full backwages to be granted to the respondent workman after the passage of 33 years since his order of termination. The second reason is that the respondent workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete backwages. But keeping in view the fact that for all these long years fortunately the respondent workman had survived and has still two more years to reach the age of superannuation as we are told, not granting him full backwages on the peculiar facts of this case, would meet the ends of justice. We , therefore, following order:

1. The impugned order of Division Bench of the High Court insofar as it holds that the termination order of the respondent workman dated 29-4-1966 was violative of Rule 5 of the relevant Rules is set aside.

2. However, the final order passed by the High Court ordering reinstatement of the

respondent workman with continuity of service is upheld on the alternative ground holding termination of services of the respondent workman on 29-4-1966 to be violative of Section 25-F of the I.D.Act.

3. So far as backwages are concerned, the impugned order of the High Court is modified by directing that the respondent workman will be entitled to get 50 % of backwages fro the date of his termination i.e. from 29-4-1966 till his actual reinstatement in service of the appellant Corporation with continuity of service. The respondent workman will also be entitled to all other consequential benefits including increments in the available time scale and revisions of the time scale, if any, and also further service benefits as per the rules and regulations of the appellant Corporation being treated to have been in continues service of the appellant-Corporation from 29-4-1966 all through out till reinstatement. The appellant Corporation shall reinstate the respondent workman without continuity of service within 8 weeks from today and will also pay 50 % backwages as directed hereinabove within that period. The appellant Corporation will also grant all other consequential benefits to the respondent workman in the light of this judgment. Appeal stands allowed as aforesaid with no order as to costs in the facts and circumstances of the case."

##. Considering the observations made by the Apex Court, the facts and circumstances before the Apex Court are mostly identical in nature and therefore, according to my opinion, in the facts and circumstances of the case, if 50 % backwages is awarded to the petitioner workman for the interim period, will meet the ends of justice.

##. In the result, present petition deserves to be allowed and same stands allowed accordingly. The impugned award passed by the Labour Court in Reference No.612 / 1984 dated 2nd March, 1993 is hereby quashed and set aside. It is directed to the respondent Board to reinstate the petitioner with continuity of service with all consequential benefits and 50 % backwages of interim period.

##. After the order is dictated, Learned advocate Mr.D.S.Vasavada appearing on behalf of the petitioner workman has requested this Court to issue some suitable

directions on the respondent Board for implementation of the order passed by this Court. Considering the request made by Mr.Vasavada, learned advocate, it is directed to the respondent to reinstate the petitioner workman with continuity of service within period of two months from the date of receipt of copy of this order. It is also further directed to the respondent Board to pay 50 % backwages as directed by this Court, to the petitioner workman within period of three months from the date of receiving a copy of this order.

This petition stands allowed accordingly. Rule is made absolute with no order as to costs.

Date : 18-4-2002 [H.K.Rathod, J.]

#kailash#